

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUMAH ALI, aka
THOMAS MOORE,

Plaintiff, No. CIV S-04-0314 MCE DAD P

vs.

RICK RIMMER, et al.,
Defendants.

AMENDED

FINDINGS AND RECOMMENDATIONS¹

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. On July 15, 2004, the court dismissed plaintiff's complaint and granted him leave to file an amended complaint.² Plaintiff's amended complaint fails to comply with the court's July 15 order and fails to state a cognizable claim as to defendants Rimmer and Grannis.

¹ In near-identical findings and recommendations issued October 12, 2005, the court inadvertently failed to set out the time period for the filing of any objections. Accordingly, these amended findings and recommendations are issued solely in order to provide plaintiff with the deadline for the filing of any objections he may have to the findings and recommendations.

² Plaintiff was subsequently granted four extensions of time to file his amended complaint.

1 In the amended complaint plaintiff claims violation of the First and Eighth
2 Amendments based upon for defendants' failure to transfer him to a correctional facility where
3 he can obtain a halal diet to accommodate his religious practices as an Orthodox Muslim. In the
4 court's July 15, 2004 order, plaintiff was advised that he may file a new action in the U.S.
5 District Court for the Northern District of California with respect to his claims against defendants
6 Lamarque, Caden, Williams, Barrett, and Barnes. Plaintiff was informed that with regard to
7 these defendants who are employed at the Salinas Valley State Prison, claims arising at that
8 facility are properly brought in the U.S. District Court for the Northern District California.³
9 Nonetheless, plaintiff continues to name the Salinas Valley State Prison defendants in his
10 amended complaint filed before this court. In fact, plaintiff has simply reproduced several pages
11 of the original complaint in his amended complaint. Plaintiff was warned that his failure to
12 comply with the court's order would result in a recommendation that this action be dismissed.
13 Therefore, the court will recommend that claims against defendants Lamarque, Caden, Williams,
14 Barrett, and Barnes be dismissed without prejudice so that plaintiff may proceed in a court where
15 venue is proper.

16 The court also finds that plaintiff has failed to state cognizable claims against
17 defendant Rimmer, the acting Director of the California Department of Corrections, and
18 defendant Grannis, the Chief of the Inmate Appeals Branch of the Department of Corrections. In
19 this regard, plaintiff was previously advised that because these defendants hold supervisory
20 positions, the causal link between them and the claimed constitutional violations must be
21 specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld,
22 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). In his amended complaint,
23 plaintiff alleges merely that defendants Rimmer and Grannis denied his grievance at the

24 ³ Specifically, it is plaintiff's allegations that the Salinas Valley State Prison defendants
25 failed to provide him a halal diet in order to accommodate his religious practices as an Orthodox
26 Muslim and then refused to transfer him to an institution where a halal diet was available to
prisoners.

1 Director's level of appeal. However, the exhibits attached to plaintiff's amended complaint
2 demonstrate that neither of these defendant had any direct involvement with plaintiff's inmate
3 appeal. Specifically, plaintiff refers the court to his Exhibit H which is a letter, dated September
4 23, 2003, addressed to plaintiff and signed by an official on behalf of defendant Grannis.⁴ (Am.
5 Compl., Ex. H.) The letter simply informs plaintiff that an inmate appeal must be submitted
6 within 15 working days from the date of the decision being appealed. (Id.) This letter fails to
7 suggest that either defendant Rimmer or defendant Grannis was involved in any decision
8 concerning plaintiff's religious diet or his request to be transferred. Nor is plaintiff's broad
9 allegation that defendants Rimmer and Grannis have a policy of failing to adhere to § 3054 of
10 Title 15 of the California Code of Regulations with respect to special religious diets and related
11 transfers sufficiently specific with respect to the causal link between those supervisorial
12 defendants and the claimed constitutional violation. Therefore, plaintiff's claim that defendants
13 Rimmer and Grannis implemented a policy which interferes with plaintiff's exercise of his
14 religion, should be dismissed as well.

15 Accordingly, IT IS HEREBY RECOMMENDED that:

16 1. Plaintiff's amended complaint, filed on December 13, 2004, be dismissed;

17 2. Claims concerning defendants Rimmer and Grannis be dismissed with

18 prejudice for failure to state a claim;

19 3. Claims concerning the remaining defendants be dismissed without prejudice in

20 order to allow plaintiff to pursue those claims in a court where venue is proper if he so desires;

21 and

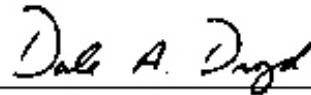
22 4. This action be dismissed.

23 These findings and recommendations are submitted to the United States District
24 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty

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26 ⁴ The official's handwriting is not fully legible.

1 days after being served with these findings and recommendations, plaintiff may file written
2 objections with the court. The document should be captioned "Objections to Magistrate Judge's
3 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
4 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
5 F.2d 1153 (9th Cir. 1991).

6 DATED: October 19, 2005.

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9 DALE A. DROZD
10 UNITED STATES MAGISTRATE JUDGE

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